U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

D1

FILE: WAC 08 092 51223 Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it is a school. The petitioner does not indicate when it was established, its number of employees, or its gross or net annual income. The petitioner seeks to extend the employment of the beneficiary as a "professor." Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On August 11, 2008, the director in a well-reasoned decision denied the petition. The director found that: the petitioner had provided a vague description of the beneficiary's duties; and the petitioner, although seeking to enroll foreign students, failed to demonstrate that it qualified as a U.S. government approved school or exchange visitor program; or it had an actual university professor position that qualified as a specialty occupation position. The director also found that the petitioner failed to comply with the director's request for further information. The director noted that although requested: the petitioner failed to provide quarterly wage reports for its employees for the last two quarters; the petitioner failed to provide its tax return documentation but had instead submitted tax documentation for another entity; and that the petitioner failed to provide evidence of the beneficiary's employment, instead submitting only a voucher paid to the order of the beneficiary, the beneficiary's Internal Revenue Service (IRS) Form 1099, Miscellaneous Income, and the beneficiary's 2006 amended IRS Form 1040. The director noted that the submission of some of the information resulted in inconsistencies in the record. For example, the director noted that the tax documentation provided from another entity was for an "S" corporation, not for a non-profit organization as the petitioner claimed to be on the Form I-129, Supplement. In addition, the director noted that the beneficiary's tax information showed that she had earned $6,908 for the 2006 year, a figure substantially less than the beneficiary's required $40,000 salary listed in the petitioner's previous petition on behalf of the beneficiary. The director, citing 8 C.F.R. § 103.2(b)(14), determined that the petitioner's failure to submit all requested evidence that precluded a material line of inquiry was grounds for denying the petition.

The petitioner submitted a timely Form I-290B, Notice of Appeal, on September 11, 2008 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. The record shows that a brief and documentation was received for filing on October 15, 2008, outside the 30 day limit. The AAO finds, however, even if considering the documentation filed in support of the Form I-290B, the petitioner failed to identify an erroneous conclusion of law or statement of fact, requiring a summary dismissal of the appeal.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The AAO notes that the petitioner appears to assert that the past approval of the petitioner's Form I-129 petition on behalf of the beneficiary requires the approval of the instant petition. The AAO advises the petitioner that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO finds if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would have been in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). The AAO further determines that prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The petitioner also provided documentation in the Spanish language on appeal. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight on appeal. The petitioner also provided documentation relating to Florida law on the validation of degrees, information on programs the petitioner supports, and a list of "professors foreign," and U.S. attorneys. The petitioner does not explain or clarify how this documentation would assist in determining that the petitioner is offering a valid specialty occupation position to the beneficiary or how the information submitted forms a basis for the appeal. The petitioner does not provide any specifics on appeal regarding a claimed erroneous conclusion of law of statement of fact made by the director. The record on appeal is insufficient to establish a legitimate basis for the appeal. As the petitioner does not present additional evidence or argument on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed. The petition is denied.